event of default. Thus the total amount in controversy exceeded the then jurisdictional requirement of $3,000.00.

By distinction there is no fixed liability in the present action upon which petitioner is suing, nor is there any matured clam for interest which forms part of his cause of action. He would be entitled to interest only in the event and to the extent he might establish respondent's liability, and it would arise solely by virtue of a delay in payment.

Salkind v. *Trafalgar Hospital*, 322 F. 2d 947 (2 Cir. 1963), recently decided by this Court, controls the present appeal, and the District Court correctly dismissed this action for lack of an amount in controversy requisite for federal jurisdiction.

B. The Matter in Controversy Did Not Arise Under the Constitution, Laws or Treaties of the United States.

In paragraph one of his complaint, petitioner states:

> "This Court has jurisdiction of the subject matter of this action in accordance with the provisions of Title 28 of the United States Code, Sections 1331 and 1332."

Since the requirements for amount in controversy are the same in actions predicated upon diversity of citizenship, §1332, and federal question, §1331, the District Court's conclusions regarding lack of jurisdictional amount apply with equal efficacy to petitioner's highly imaginative claims of an unlawful search and seizure.

Moreover, petitioner's reliance upon the standards of criminal procedure for the issuance of search warrants overlooks the fact that the attachments here involved "bear no semblance to the use of the word warrant in the

Fourth Amendment." *United States* v. *935 Cases More or Less,* 136 F. 2d 523 (6 Cir. 1943); *United States* v. *75 Cases,* 146 F. 2d 124 (4 Cir. 1944). The Supreme Court long ago rejected the contention that writs of attachment violate the Fourth Amendment in holding that the amendment "has no reference to civil proceedings for the recovery of debts, of which a search warrant is not made part." *Den* v. *Hoboken Land and Improvement Company,* 18 How. 272 (U. S. 1856).

Additionally, petitioner for the first time alludes to 18 U.S.C. §241. Obviously this criminal statute prescribing conspiracies to violate civil rights has no bearing upon this civil action which, at most, states a doubtful claim of trespass, *Edmonds* v. *Buel,* 23 Conn. 242 (1854), or trespass on the case, *Luddington* v. *Peck,* 2 Conn. 700 (1818). Certainly petitioner's complaint sets forth no facts nor allegations referable to this federal criminal statute.

Accordingly, petitioner's claim did not arise under the Constitution, laws or treaties of the United States, but even if it is held that the claim did so arise, the jurisdictional amount of $10,000 would still apply and petitioner is unable to exhibit damages in excess of $10,000 exclusive of interests and costs.

CONCLUSION

The writ should be denied because the District Court lacked jurisdiction over the subject matter of this action.

Respectfully submitted,

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